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FRIEDLIN *v.* CROCKIN et al.

March 21, 1918.

[95 S. E. 432.]

1. **Pleading (§ 399\*)—Variance—Setting Aside Verdict.**—Where, before taking possession under lease, lessee corporation was dissolved, and the lessor was notified that premises would not be occupied under lease, the lessor could not recover in a suit against stockholders jointly on promise to be responsible for the rent until another tenant was procured, where the evidence showed no joint promise, and, the jury having, in disregard of instructions, found a joint verdict against defendants the court properly set it aside.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 479.]

2. **Frauds, Statutes of (§ 23 (1)\*)—Promise to Answer for Debt of Another.**—Verbal promise of stockholders to be responsible for rent on premises leased by corporation until another tenant was procured was collateral, and the lessor, who did not release corporation or waive any of her rights, could not recover on such promise, in view of Code 1904, § 2840, requiring promises to answer for the debt of another to be in writing, signed by the party to be charged or his agent.

Sims, J., dissenting.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 519.]

Error to Hustings Court, City of Portsmouth.

Action by one Friedlin against Nathan Crockin and others. Verdict and judgment for defendants, and plaintiff brings error. Affirmed.

*S. Burnell Bragg and Pender & Way*, all of Norfolk, for plaintiff in error.

*John W. Happer and Frank L. Crocker*, both of Portsmouth, for defendants in error.

CASEY *v.* WALKER & MOSBY.

March 21, 1918.

[95 S. E. 434.]

1. **Assumpsit, Action of (§ 4\*)—When Action Lies.**—Assumpsit does not lie in any case, except when damages are sought for the breach of a contract, express or implied.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 4.]

2. **Principal and Agent (§ 41\*)—Revocation of Authority—Rights of Parties.**—Where defendant authorized plaintiffs for a commission to rent and care for property without specifying period of

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\*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.